

99439

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HERCULES, INC.,
AVON PRODUCTS, INC.,
CHAMPLAIN CABLE CORPORATION,
CHRYSLER CORPORATION,
E.I. DUPONT DE NEMOURS & CO., INC.,
GENERAL MOTORS CORPORATION,
ICI AMERICAS, INC., and
WITCO CORPORATION,

Defendants.

C.A. No. 89-562-LON

CONSENT DECREE

I. INTRODUCTORY STATEMENT

1. On October 16, 1989, the United States of America ("the United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") filed a complaint against the above-named defendants, under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, as amended, for reimbursement of Past Removal Costs, as defined in Section VI.A and B, herein, incurred by the United States in responding to a release or threatened release of hazardous substances at the Delaware Sand & Gravel Superfund Site in New Castle County, Delaware (the "Delaware Sand & Gravel Site").

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2. Between January 16 and 22, 1990, defendants filed their answers to the complaint.

3. Defendants Hercules, Inc., Champlain Cable Corporation, Chrysler Corporation, E.I. duPont de Nemours & Co., Inc., General Motors Corporation, ICI Americas, Inc., and Witco Corporation (hereinafter the "Settling Defendants") and the United States wish to resolve the United States' claims for the Past Removal Costs (as more fully described in Section VI.A and B below) against the Settling Defendants, without further litigation, and without affecting or impairing any claims of the parties against any person or entity other than as explicitly stated herein.

4. The parties to this Consent Decree agree that settlement of the United States' claims for the Past Removal Costs against the Settling Defendants is in the public interest and made in good faith and at arms-length, and that entry of this Consent Decree is the most appropriate means to resolve those claims.

NOW THEREFORE, before the taking of any testimony, without adjudication of the merits of the United States' claims for Past Removal Costs, without admission with regard to liability by any party, and with the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

II. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action and over the parties to this Consent Decree

pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b). The parties agree to be bound by the terms of this Consent Decree and not to contest its validity in any subsequent proceeding arising from it.

B. Venue is proper in this Court pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b).

III. APPLICABILITY

This Consent Decree shall be binding upon the United States, and upon the Settling Defendants, their successors, and assigns.

IV. AUTHORIZATION

The undersigned representatives of the Settling Defendants each certifies that he or she is authorized by the party or parties for whom he or she is signing to enter into this Consent Decree and to execute and legally bind that party or those parties to the terms and conditions of this Consent Decree.

V. VOIDABILITY

If for any reason the Court should decline to approve this Consent Decree, this Consent Decree shall be void and the terms hereof cannot be used as evidence in any litigation.

VI. PAST REMOVAL COSTS

A. "Past Removal Costs" include all costs incurred by the United States in connection with the inspections, monitoring, evaluations, assessments, sampling, analysis, and immediate removal response actions conducted at the Delaware Sand & Gravel

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Site between November 1, 1979 and May 31, 1984 totalling \$745,928.00. Past Removal Costs also include costs of enforcement associated with and statutory interest accrued upon said Past Removal Costs.

B. The Past Removal Costs do not include any response costs incurred in connection with any federal activity at the Delaware Sand & Gravel Site other than the measures specified in paragraph VI.A above. The Past Removal Costs expressly do not include, for example, costs of the design, development or oversight of any phases of any remedial investigation or feasibility study at the Delaware Sand & Gravel Site, or any other response activity, except as expressly provided in paragraph VI.A above.

VII. REIMBURSEMENT OF PAST REMOVAL COSTS

A. Within fifteen (15) days of the entry of this Consent Decree by the Court, the Settling Defendants shall pay the sum of SIX HUNDRED THOUSAND (\$600,000.00) to the United States by certified or cashier's check, payable to "EPA - Hazardous Substances Superfund," shall reference the Delaware Sand & Gravel Site by name, and shall be delivered to:

E.P.A. Region 3
Attention: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA. 15251

B. A copy of the certified or cashier's check and any transmittal letters shall be sent simultaneously to the Regional Hearing Clerk, 3RC00, EPA Region III, 841 Chestnut Building, Philadelphia, PA. 19107, and to the Chief, Environmental

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Enforcement Section, Environment and Natural Resources Division,
United States Department of Justice, P.O. Box 7611, Ben Franklin
Station, Washington, D.C. 20044.

C. Any payments not paid when due shall accrue interest at the rate of ten percent (10%) per annum, calculated from the date of entry of this Consent Decree.

VIII. RESERVATION OF RIGHTS

A. Except as provided in paragraph IX, infra, the United States expressly reserves all its rights under federal law, including its right to take action against the Settling Defendants or against any other responsible party to obtain injunctive relief at the Delaware Sand & Gravel Site or to recover any and all costs of response as "response" is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), incurred or to be incurred by the United States at the Delaware Sand & Gravel Site. The Settling Defendants expressly reserve all rights and defenses with respect to such claims, except as provided in paragraph VIII.C, infra.

B. The United States expressly reserves its rights to take action to recover unreimbursed response costs from any non-settling defendant named in the complaint or from any person other than the Settling Defendants.

C. In any subsequent action by the United States for injunctive relief or for the recovery of response costs, (other than Past Removal Costs) incurred by the United States at the Delaware Sand & Gravel Site, the Settling Defendants shall not

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assert any defense of claim-splitting, collateral estoppel, and res judicata based upon the filing or dismissal of this action for Past Removal Costs, or entry of this Consent Decree. The United States reserves all claims for costs incurred by the United States (other than Past Removal Costs as defined herein) against the Settling Defendants.

IX. COVENANT NOT TO SUE

A. In consideration for the payment to be made by the Settling Defendants as provided in Section VII, supra, and effective upon receipt of such payment, the United States covenants not to sue, execute judgment or take any other civil judicial or administrative action against the Settling Defendants for recovery of the Past Removal Costs.

B. In consideration of the covenants made in this Consent Decree, the Settling Defendants will not make any claims or demands for the Past Removal Costs as defined herein against the United States either in its own name or as trustee of the Hazardous Substance Superfund established by Section 221 of CERCLA, 42 U.S.C. § 9631, including any claims pursuant to Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612, or make any claims for indemnification or contribution by the United States of the amount paid pursuant to Section VII.A, supra.

C. Nothing in this Consent Decree shall be construed as an allocation or apportionment of the liability of the Settling Defendants or of any person not party to this Consent

Decree, for any response costs incurred by the United States in connection with the Delaware Sand & Gravel Site, or for injunctive relief at the Delaware Sand & Gravel Site. ORIGINAL
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D. This covenant not to sue does not cover: 1.) claims based upon a failure by the Settling Defendants to comply with the terms of this Consent Decree; 2.) any claim for recovery of response costs not listed in Section VI of this Consent Decree; 3.) criminal claims; 4.) claims for damages to natural resources at the Site; and 5.) claims based on liability for hazardous substances removed from the Delaware Sand & Gravel Site.

X. CONTRIBUTION ACTIONS BY OTHER PARTIES

Payment by the Settling Defendants pursuant to Section VII of this Consent Decree represents a fair and reasonable settlement and constitutes the resolution of any liability of the Settling Defendants to the United States, within the meaning of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), for the Past Removal Costs as defined in Section VI of this Consent Decree.

XI. STATEMENT REGARDING LIABILITY

This Consent Decree was negotiated and executed by the United States and the Settling Defendants in good faith to avoid potentially expensive and protracted litigation. The execution of this Consent Decree is not and shall not be considered an admission of liability or fault of any kind, nor is it an admission of the factual allegations set forth in the complaint. Neither this Consent Decree nor any of its terms or provisions shall constitute any evidence against, admission by, or estoppel

against the Settling Defendants, except as provided by Section VIII.C herein, or the United States with respect to any claim or cause of action arising from the contamination at the Delaware Sand & Gravel Site, except as may be necessary for the Settling Defendants to obtain the contribution protection granted in Section X, supra, and except in any proceedings by the United States to enforce the terms of this Consent Decree.

XII. RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the United States' response authority under Sections 104 and 106 of CERCLA, 42 U.S.C. §§ 9604 and 9606.

XIII. RETENTION OF JURISDICTION AND TERMINATION

Upon delivery to the United States of the sums provided for in Section VII of this Consent Decree, this action by the United States under Section 107 of CERCLA, 42 U.S.C. § 9607 against the Settling Defendants for the Past Removal Costs, shall be dismissed with prejudice. Following such dismissal, the Court shall retain jurisdiction of this matter with respect to the non-settling defendant Avon Products, Inc., the United States' request for declaratory relief against all defendants under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), and any cross-claims and third-party claims.

XIV. COSTS OF SUIT AND ENFORCEMENT

Each party to this Consent Decree shall bear its own costs and attorneys' fees incurred in this action through the date of entry of this Consent Decree. Each party to this Consent

Decree expressly reserves its right to collect its unreimbursed costs and attorneys' fees under CERCLA from any other non-settling responsible party as more fully set forth in Section VIII of this Consent Decree.

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XVI. PUBLIC COMMENT

The parties agree and acknowledge that final approval and entry of this proposed Consent Decree is subject to the requirements of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA:

DATE

RICHARD B. STEWART
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

DATE

MICHAEL D. MCINTYRE, Attorney
Environmental Enforcement Section
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044
(202) 514-5508

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(Recd)

WILLIAM C. CARPENTER, JR.
United States Attorney
District of Delaware

DATE

PATRICIA C. HANNIGAN
Assistant United States Attorney
J. Caleb Boggs Federal Building
844 King Street, Room 5110
Wilmington, Delaware 19801
(302) 573-6277
FTS 467-5172

DATE

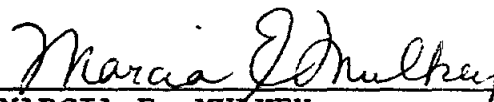
6/27/90



EDWIN B. ERICKSON
Regional Administrator
U.S. Environmental Protection
Agency - Region III
841 Chestnut Building
Philadelphia, PA 19107

DATE

6/22/90



MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection
Agency - Region III
841 Chestnut Building
Philadelphia, PA 19107

DATE

6/7/90



MARIA PARISI VICKERS
Assistant Regional Counsel
U.S. Environmental Protection
Agency - Region III
841 Chestnut Building
Philadelphia, PA. 19107
(215) 597-9387

FOR THE SETTLING DEFENDANTS:

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United States v. Hercules Incorporated et.al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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June 1, 1990
Date

Hercules Incorporated
Company Name

By: S. Maynard Turk
(Signature)

S. Maynard Turk
Vice President and General Counsel
(Please type name and title here)

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United States v. Hercules Incorporated, et.al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

June 1, 1990
Date

Champlain Cable Corporation
Company Name

By: Eugene F. Torvend
(Signature)

Eugene F. Torvend, President
(Please type name and title here)

United States v. Hercules, Inc., et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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(Red)

6-4-90
Date

Chrysler Corporation
Company Name

By: Lynn Y Buhl
(Signature)

Lynn Y. Buhl, Staff Counsel
(Please type name and title here)

United States v. Hercules, Inc., et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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(Recd)

5/29/90
Date

E.I. duPont de Nemours & Co., Inc.
Company Name

By: John B. Frazier
(Signature)

John B. Frazier
Manager, Business Programs
Safety & Environmental Resources Division

(Please type name and title here)

United States v. Hercules, Inc., et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

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May 31, 1990
Date

General Motors Corporation
Company Name

By: Mark Hester
(Signature)

Mark Hester, Attorney
(Please type name and title here)

United States v. Hercules, Inc., et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

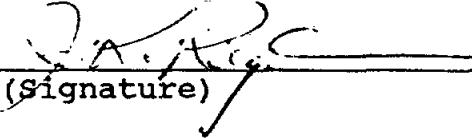
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June 1, 1990

Date

ICI Americas, Inc.
Company Name

By:


(Signature)

J. Kent Riegel
Vice President & General Counsel
(Please type name and title here)

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United States v. Hercules, Inc., et al.
C.A. No. 89-562-LON
Consent Decree
United States District Court
District of Delaware

May 30, 1990
Date

Witco Corporation
Company Name

By:

W R Toller
(Signature)

W. R. Toller, Vice Chairman & Chief Financial Officer
(Please type name and title here)

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THIS CONSENT DECREE (C.A. No. 89-562-LON) IS HEREBY
ENTERED AND MADE AN ORDER OF THIS COURT THIS _____ DAY OF
_____, 1990.

CHIEF JUDGE JOSEPH J. LONGOBARDI
UNITED STATES DISTRICT COURT JUDGE